



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Tuesday, the Thirtieth day of August Two Thousand and Twenty Two
PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD) No.5372 of 2022
IN
CRL A(MD) No.306 of 2022

MARUTHUPANDIYAN

... PETITIONER/APPELLANT/
SOLE ACCUSED

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE
NARIKUDI POLICE STATION,
VIRUDHUNAGAR DISTRICT.
CRIME NO.91 OF 2018.

... RESPONDENT/RESPONDENT/
COMPLAINANT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to Suspend the sentence imposed on the Petitioner by the Learned Sessions Judge, Special Court for POCSO Act Cases, Virudhunagar District at Srivilliputhur by its Judgment in Spl.SC.No.40 of 2019 dated 10.02.2022 and enlarge him on bail pending disposal of the Criminal Appeal.

PRAYER CRL A(MD)No.306 of 2022:

Pleased to call for the records of the impugned judgment made in Spl.S.C.No.40 of 2019 on the file of the Learned Sessions Judge, Special Court for POCSO Act Cases, Virudhunagar District at Srivilliputhur dated 10.02.2022 and set aside the same.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.JEGADEESH PANDIAN.M, Advocate for the petitioner and of Mr.B.NAMBI SELVAN, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

RESERVED ON	29.08.2022
PRONOUNCED ON	30.08.2022

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner/accused by the learned Sessions Judge, Special Court for POCSO Act Cases, Virudhunagar District at Srivilliputhur, in Spl.S.C.No.40 of 2019, dated 10.02.2022, till the disposal of the Criminal Appeal.



2.The case of the prosecution is that on 21.05.2018 at about 11.00 a.m., when the victim was communicating with the petitioner through cell phone, the accused had made sweet coated words and called her into Kariyapatti Village, where from, the accused had lifted from her parental custody into his custody and proceeded to a Vinayagar Temple situated at Madurai, where, he tied a thali, that the accused had then taken the victim to a house at Tirupur, where, he committed aggravated penetrative sexual assault against her on so many times and that the respondent police has subsequently, rescued the victim.

3.Originally, on the basis of the complaint lodged by the victim's father, FIR came to be registered in Crime No.91 of 2018 as "Girl Missing" and after recording the statement of the victim, the case was altered into Sections 4 and 6 of POCSO Act r/w Section 10 of Child Marriage Restraint Act, 2006. The respondent after completing the investigation, has laid the final report against the petitioner/accused and the case was taken on file in Spl.S.C.No.40 of 2019 on the file of the learned Sessions Judge, Special Court for POCSO Act Cases, Virudhunagar District at Srivilliputhur.

4.During the trial, the prosecution has examined 17 witnesses as P.W.1 to P.W.17 and exhibited 6 documents as Ex.P1 to Ex.P6. The defence has adduced neither oral nor documentary evidence.

5.The learned Sessions Judge, upon considering the evidence and on hearing the arguments of both sides, has passed the impugned Judgment, dated 10.02.2022 and convicted the petitioner/accused for the offence under Section 366 IPC and sentenced him to undergo 10 years Imprisonment and to pay a fine of Rs.1,000/- in default to undergo six months simple imprisonment and for the offence under Section 6 r/w 5(1) of POCSO Act and sentenced him to undergo 10 years Imprisonment and to pay a fine of Rs.1,000/- in default to undergo six months simple imprisonment and found not guilty for the offence under Section 10 of Child Marriage Restraint Act, 2006 and acquitted him. Further, the trial Court recommended the District Collector, Virudhunagar to pay Rs.10,00,000/- as final compensation after deducting the interim compensation paid, if any to the victim girl/P.W.2 through RTGS or NEFT in her bank and the Secretary, District Legal Services Authority, Virudhunagar District at Srivilliputhur is also directed to forward the copy of Judgment to the District Collector, Virudhunagar for compliance. Aggrieved by the said Judgment of conviction and sentence, the petitioner/accused has preferred the present appeal along with the above Miscellaneous Petition seeking suspension of sentence.

6.Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondent.



7.The learned counsel for the petitioner would submit that there is no corroboration between the evidence of P.W.1 and other witnesses, that the entire prosecution case is depending upon the sole version of P.W.2 alone and that P.W.2 is a minor girl and she admitted that it is a case of love affair. He would further submit that there existed long delay in lodging the complaint and for the FIR reaching the Court and that the delay was not properly explained and the trial Court has not given any plausible reason for the delay. He would further submit that there are several infirmities in the prosecution case and further there are contradictions in material particulars between the evidence of the prosecution witnesses.

8.The learned Additional Public Prosecutor would submit that the evidence of victim clearly proved that the accused has used honey coated words and made her believe whatever he said and had made her to take the jewels from her house and made her to elope from her home and married her by knowing that the victim girl is a minor girl and has also sexually assaulted her and that thereby, the accused committed the offence under Sections 4 and 6 of POCSO Act. He would further submit that the trial Court after carefully taking into consideration of the evidences deposed by the witnesses as well as medical report and medical witnesses, has come to a right conclusion that the victim, who was aged 16 years would not have any malice or ill will against any person. He would further submit that there are enough materials available on record against the petitioner and hence, he strongly opposed to grant suspension of sentence.

9.No doubt, as rightly pointed out by the learned counsel for the petitioner, the victim in her statement recorded under Section 164 of Cr.P.C. has only alleged that she went to Tirupur with the petitioner and after marriage, they had stayed in the house for 15 days and that the victim has not specifically given any statement, that she was subjected to aggravated penetrative sexual assault. But according to the petitioner, subsequently, at the instigation of the others, she gave evidence implicating the petitioner. The learned counsel for the petitioner would submit that the victim girl was married to another person and after her marriage, she gave evidence before the trial Court. As rightly contended by the learned Additional Public Prosecutor, even after marrying another person, the victim has given evidence in clear terms implicating the petitioner and that the petitioner had sexually intercourse without her consent and by coercing her.

10.Considering the above facts and circumstances of the case and also considering the seriousness and gravity of the offence alleged against the petitioner and also the fact that the petitioner

<https://www.hc.madras.gov.in> in incarceration from the date of Judgment i.e., on



10.02.2022, this Court is not inclined to grant suspended sentence to the petitioner at this point of time.

11. In the result, this Criminal Miscellaneous Petition is dismissed

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30/08/2022

/ TRUE COPY /

/09/2022

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

- 1 THE SESSIONS JUDGE
SPECIAL COURT FOR POCSO ACT CASES,
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTHUR.
- 2 THE SUPERINTENDENT
CENTRAL PRISON, MADURAI.
- 3 THE INSPECTOR OF POLICE
NARIKUDI POLICE STATION,
VIRUDHUNAGAR DISTRICT.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER

IN

CRL MP(MD) No.5372 of 2022
IN
CRL A(MD) No.306 of 2022
Date :30/08/2022

sj i
SA/SVR/SAR.1/07.09.2022/4P/5C